IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 3087 of 1992

For Approval and Signature:

Hon'ble MR.JUSTICE D.H.WAGHELA Sd/-

==========

1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

1 to 5 No

O N G C

Versus

MALI RAJKARAN S YADAV

Appearance:

1. Special Civil Application No. 3087 of 1992

MS BRAHMBHATT for MS VASUBEN P SHAH for Petitioner

MR RV DESAI for Respondent No. 1

CORAM : MR.JUSTICE D.H.WAGHELA

Date of decision: 20/12/2001

ORAL JUDGEMENT

1. By this petition under Article 227 of the Constitution, the award of the Industrial Tribunal, Ahmedabad, in Reference (ITC) No.10 of 1989, whereby the respondent was ordered to be reinstated with 50% backwages, is called into question. Even while admitting the matter on 5.5.1992, the Division Bench of this Court

had expressly refused interim relief against reinstatement and ordered the petitioner to pay 20% of the backwages with the further order that the remaining part of the backwages shall have to be paid with interest @ 15% in case the petitioner loses in the petition.

2. Arguing on merits, it was contended on behalf of the petitioner that the petitioner had entered into a contract for service for a limited period with the respondent and at the end of the period prescribed by the contract, the respondent was relieved. Therefore, according to the petitioner, there was no question of the respondent being in the employment of the petitioner and being discharged from service in violation of Section 25-F of the Industrial Disputes Act, 1947 (`the Act' for short) and, therefore, the case of the petitioner throughout is that the contract entered into between the petitioner and the respondent was that of 'contract for service' as distinguished from 'contract of service'. The petitioner relied upon the paper of agreement on which the signature of the respondent was obtained.

3. Dealing with the same contention of the petitioner, the Industrial Tribunal has, in the impugned award, discussed in detail the evidence led by the parties and arrived at the finding of fact that the relationship between the petitioner and the respondent was that of master and servant and the so-called agreement executed or signed after almost three-and-half months was a farce. Having reached this finding of fact, the conclusion that necessarily followed was that the

termination of service after a continuous service of one year, without notice, notice pay or payment of any compensation, was ab initio void for being in violation of Section 25-F of the Act.

4. After going through the impugned order and referring to the documentary evidence on which reliance was placed before the Labour Court as well as in this Court, it could not be established as to how the finding of fact was perverse or in any way illegal. Instead, even on re-appreciation of evidence, the conclusion

reached by the Industrial Tribunal was inescapable that the contract between the petitioner and the respondent was that of `contract of service'. Thus, no case is made out to interfere with the impugned award, particularly in exercise of the powers of this Court under Article 227 of the Constitution.

5. The learned counsel for the petitioner sought to raise altogether new pleas which were never pleaded before the Tribunal and particularly the contentions that the respondent was not a `workman' within the meaning and definition of the Act and that, in any case, the case of termination was covered by Section 2 (oo) (bb) of the Act. These being questions of fact and having never been raised before the Industrial Tribunal, they are rejected.

6. Accordingly, the petition is dismissed and there already being an order of the Division Bench as mentioned hereinabove, the petitioner is directed to pay to the respondent the remaining amount of backwages with 15% interest within a period of two months from today. Rule is discharged with no order as to costs.

Sd/-
20.12.2001 (D.H.Waghela, J.)
(KMG Thilake)